

**IF NOT US, THEN WHO?
IN HONOR OF GIDEON
A PLAY BY MIKE THOMAS**

(Two actors enter.)

- 1: I'm often asked, "How can you defend those people?"
- 2: *(Reciting from a letter)* "Dear Miss Stivers:
- 1: "Those people" are anyone who has ever walked alone.
- 2: "I wanted to send you this card to thank you for all you've done for me."
- 1: Stood alone.
- 2: "When I got arrested, I was sure everyone would look down their noses at me and not give me a chance."
- 1: Felt alone.
- 2: "I've always fought my own battles."
- 1: Were alone.
- 2: "Just look at this as gratitude from a lone warrior."
- 1: "Those people."
- 2: "Thank you for giving me my life back. Sincerely, William."
- 1: To quote Ogden Nash: "Our fathers claimed by obvious madness moved, / Man's innocent until his guilt is proved. They would have known, had they not been confused, / He's innocent until he is accused."
- 2: "How can you defend 'those people'?"
- 1: Normally, I walk away from the person who asks, but if they won't let me, the honest answer is:
- Both: If not we, then who?
- 2: For I am a public defender.
- 1: I am the blindfold on the scales of justice.

2: I am a voice for the voiceless.

1: I am a defender of the Constitution.

2: I am a guardian of liberty.

1: I am neither judge nor jury.

2: For I am guilty, too.

1: I am the lonely.

2: I am the accused.

1: I am “those people.”

2: (*Becoming Gideon*) I am Clarence Earl Gideon.

1: (*As the Court*) August 4, 1961. The State of Florida versus Clarence Earl Gideon charged with breaking and entering. What says the Defendant? Are you ready to go to trial?

2: (*As Gideon*) I am not ready, your Honor.

1: (*As the Court*) Did you plead not guilty to this charge by reason of insanity?

2: (*As Gideon*) No, sir.

1: (*As the Court*) Why aren’t you ready?

2: (*As Gideon*) I have no counsel.

1: (*As the Court*) Why do you not have counsel? Did you not know that your case was set for trial today?

2: (*As Gideon*) Yes, sir, I knew that it was set for trial today.

1: (*As the Court*) Why, then, did you not secure counsel and be prepared to go to trial?

2: (*As Gideon*) Your Honor, I request this Court to appoint counsel to represent me in this trial.

1: (*As the Court*) Mr. Gideon, under the laws of the state of Florida, the only time the court can appoint counsel to represent a defendant is when the person is charged with a capital offense.

- 2: (*As Gideon*) The United States Supreme Court says that I am entitled to be represented by counsel.
- 1: (*As the Court*) I am sorry, but I will have to deny your request to appoint counsel to defend you in this case.
- 2: (*As Gideon*) Take away this right and there is nothing left.
- 1: (*As the Court*) Clarence Earl Gideon in a handwritten petition to the Supreme Court of the United States, October Term. 1962.
- 2: (*As Gideon*) It makes no difference how old I am or what color I am or what church I belong to, if any. I did not get a fair trial.
- 1: (*As the Court*) In the Supreme Court of the United States. January 15, 1963.
- 2: Oral argument by Abe Fortas by appointment of the Court on behalf of Clarence Earl Gideon.
- 1: (*As Fortas*) I may be wrong about this, but I do believe that in some of the Court's decisions there has been a tendency from time to time to forget the realities of what happens downstairs, of what happens to these poor, miserable, indigent people when they are arrested, brought into jail, questioned, and later on are brought into these strange and awesome circumstances before a magistrate, and then before a court; and there, Clarence Earl Gideon, defend yourself!
- 2: (*As Gideon*) I have no illusions about law and courts or the people who are involved in them.
- 1: (*As Fortas*) I knew as soon as I read the transcripts of the Florida trial that here was a perfect case to challenge the assumption found in 1942's "Betts versus Brady" that a man would have a fair trial without a lawyer.
- 2: (*As Gideon*) "In Betts versus Brady they were trying to allow 'em their states' rights. They gave the state courts discretion. They just said 'no'. They talk about states' rights. I think there's only one state...the United States."
- 1: (*As Fortas*) Mr. Gideon did very well for a layman, he acted like a lawyer. But it was a pitiful effort really.
- 2: (*As Gideon*) I have read the complete history of law ever since the Romans first started writing them down and before that of the laws of religions.

1: *(As Fortas)* He may have committed the crime, but the prosecution in Florida never proved it. A lawyer, just an ordinary, competent lawyer could have made ashes of the case.

2: *(As Gideon)* I believe that each era finds an improvement in law...

1: *(As Fortas)* In examining Betts against Brady, we have to start back with that magnificent decision and opinion of the Court written by Mr. Justice Sutherland in Powell against Alabama...the case of the Scottsboro Boys.

2: *(As Gideon)* Each year brings something new for the benefit of mankind.

1: *(Quoting Sutherland)* "The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the most intelligent and educated layman has small and sometimes no skill in the science of law. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect?"

2: In the United States Supreme Court.

1: Gideon versus Wainwright..

2: March 18, 1963. Justice Black delivers the decision.

1: *(As Black)* The Court in Betts against Brady departed from the sound wisdom upon which the Court's holding in Powell against Alabama rested. Twenty-two states as friends of the Court, argue that Betts was 'an anachronism when handed down' and that it should now be overruled.

2: *(As Gideon)* Maybe this will be one of those small steps forward.

1: We agree. As Robert F. Kennedy said in 1963:

2: *(As Kennedy)* If an obscure Florida convict named Clarence Earl Gideon had not sat down in his prison cell with a pen and paper to write to a letter to the Supreme Court, and if the Court had not taken the trouble to look for merit in that one crude petition among all the bundles of mail it must receive every day, the vast machinery of American law would have gone on functioning undisturbed."

1: But Gideon DID write that letter.

2: The Court DID look into his case.

1: He WAS retried with the help of competent defense counsel.

2: And was found not guilty and released from prison after two years of punishment for a crime he did not commit---

1: And the whole course of American legal history has been changed.”

2: Forty years have passed. Great strides have been made toward fulfilling the promise of Gideon.

1: In 1972, Kentucky Governor Wendell Ford created a state public defender system when he said: “There can be no civilized enforcement of criminal law without full legal assistance to the accused. This we shall have!”

2: There are now full-time public defenders in 112 Kentucky counties.

1: Specially trained lawyers are available to children, people facing the death penalty, and people, like Gideon, who are accessing the justice system while in prison.

2: Yet a promise remains unrealized.

1: Many of Kentucky’s public defenders are burdened by caseloads well-over national standards.

2: Conventional wisdom states it is often better to be rich and guilty than poor and innocent.

1: Kentucky’s public defenders often lack the support needed. The ratio of investigators to cases is 1 investigator to over 2000 cases.

2: The guiding hand of competent, adequately supported counsel remains out of reach to many in need.

1: Innocence projects across the nation have proven through DNA testing that we still have innocent people in our prisons.

2: Innocence projects in Kentucky show that it can happen here, as well.

1: I’m often asked...

2: “Why represent poor people?”

1: Why not take private, paying clients and avoid the burdens of being a public employee?

2: Why not avoid the humiliation of having to grovel for the barest resources necessary to do a good job?

- 1: And the answer is simple: There is compensation of another kind.
- 2: It is a privilege.
- 1: It is an honor.
- 2: It is a promise for all of us to keep.
- 1: How can we not?
- 2: For I have learned from my clients.
- 1: *(From a client letter)* Dear Mr. Thompson.
- 2: I am a public defender.
- 1: I hope and pray this letter reaches you in the very best of health and spirits.
- 2: I am the guardian of the presumption of innocence, due process and fair trial.
- 1: I will start by telling you how very thankful I am for you.
- 2: To me is entrusted the preservation of those sacred principles.
- 1: There are not too many people like you in this world with a good heart.
- 2: I will promulgate them with courtesy and respect...
- 1: I can't find the words to express my gratitude for what you have done for me.
- 2: But not with obsequiousness and not with fear...
- 1: But I carry in my heart your sweetness and kindness.
- 2: For I am partisan.
- 1: All the more remarkable is that you very easily could have said, "It's not my job."
- 2: I am counsel for the defense.
- 1: I admire your courage.
- 2: Let none who oppose me forget that with every fiber of my being I will fight for my clients.
- 1: I only say that because it is true.

2: My clients are the indigent accused.

1: I am not at all used to having to depend on anyone.

2: They are the lonely.

1: I don't know what I would have done without you around.

2: The friendless.

1: I believe you were put in my life for a reason.

2: There is no one to speak for them but me.

1: Without your efforts, no one would have listened.

2: My voice will be raised in their defense.

1: You don't just see the bad in people.

2: I will resolve all doubt in their favor.

1: You see the good, as well.

2: This will be my credo.

1: You have saved my family from a life of suffering.

2: This and the Golden Rule.

1: I will never be able to repay you.

2: I will seek acclaim and approval only from my own conscience.

1: Sincerely,

2: And if upon my death there are a few lonely people who have benefited.

1: Janice Barnhart

2: My efforts will not have been in vain.

1: For we all are public defenders.

2: We are the lonely.

1: We are the accused.

2: We are “those people.”

1: We are Clarence Earl Gideon.

2: (*Quoting Gideon*) I believe that each era finds an improvement in the law.

1: I am often asked, “How can you defend those people?”

2: (*Quoting Gideon*) Each year brings something new for the benefit of mankind.

1: If not us...

Both: Then who?

(Lights fade to black and the play is done.)